THE DECALOGUE JOURNAL

A PUBLICATION OF THE DECALOGUE SOCIETY OF LAWYERS

Volume 8 SEPTEMBER, 1957 Number 1

The Qualified Lawyer

. . . If we are to produce the lawyer who is to produce and later be the chosen, as judge, we best should create a system for development of the most qualified. It is difficult to understand why the physician or the engineer, dedicated to precise sciences, is given the thorough screening he does get and justifiably so, while the lawyer, dedicated to the importunate and unprecise mechanics of human relations, requiring far deeper insight into the dynamic complexities of swiftly shunting phases of attitudes, hopes, prejudices, necessities and desires, is given a minimum of learning. It seems fantastic to me that the lawyer who is physician to the epidemic diseases of offer, acceptance and consideration; surgeon for this contractectomy; diagnostician of the ill-considered and analyst of the tort, does not know save by occasional, personal culturation, the Judao-Christian ethic, the sequential movements of thought and the psychopathology of everyday life, and which operates as surely as the circulation of the blood in the behavior-testing by every court.

I do not criticize the kind of lawyer we have; I emphasize the kind of lawyer who can be guaranteed. Apart from his operation within the court itself, he has the moral obligation to determine for the lay public not only the quality of court but the spiritual perspective in which courts will be viewed. He is agent provocateur, for good and evil, and because he is intrinsically a part of all administrative structure by nature of his training, he must codify in public office and exemplify in behavior the most articulate rules and the cleanest escutcheon. . . .

HENRY CLAY GREENBERG, ***Justice of the Supreme Court, State of New York***

From THE RECORD *of the Association of the Bar of the City of New York*

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IN THIS ISSUE

The Editor will be glad to receive contributions of articles of modest length, from members of The Decalogue Society of Lawyers only, upon subjects of interest to the profession. Communications should be addressed to the Editor, Benjamin Weintroub, 179 West Washington Street, Chicago 2, Illinois.

PRESIDENT JESMER APPOINTS COMMITTEE CHAIRMEN

The hopes of our new president for a year rich with accomplishments rest upon the chairmen of our organizations committees, the list of which follows.

"The men who are to supply the leadership and carry on our Society's many activities in its relation to the profession and the community have my utmost confidence," Jesmer said. "It is through them that we shall enhance the prestige of our bar association and maintain our standing as a constructive factor for civic good in our city, state, and nation."

In several conferences with the chairmen, Jesmer urged the need for the enlistment of the interest of the entire membership in the activities ahead.

Members anxious to serve on any committee listed below are invited to communicate with Society's offices at 180 W. Washington Street, Chicago 2, Illinois, and indicate their preferences.

Standing Committees and Chairmen—1957

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INAUGURAL ADDRESS OF NEW PRESIDENT

The installation ceremonies inducting into office Solomon Jesmer, the new president of The Decalogue Society of Lawyers, were marked by a large attendance of members, their families, and friends. Representatives of the Bench and Bar emphasized the fitness of Jesmer and the newly elected officers and members of the Board for their respective posts.

The affair was held at a luncheon in the Covenant Club on June 14, 1957. Judge Jacob M. Braude, of the Circuit Court of Cook County, was the installing officer. Past President Bernard H. Sokol made the presentation of a gift to the retiring president, Morton Schaeffer. E. Douglas Schwantes, president of the Chicago Bar Association, made the principal address. Other officers installed were: 1st Vice-President, Alec E. Weinrob; 2nd Vice-President, Meyer Weinberg; Treasurer, Harry H. Malkin; Financial Secretary, Judge Norman Eiger; Recording Secretary, Michael Levin.

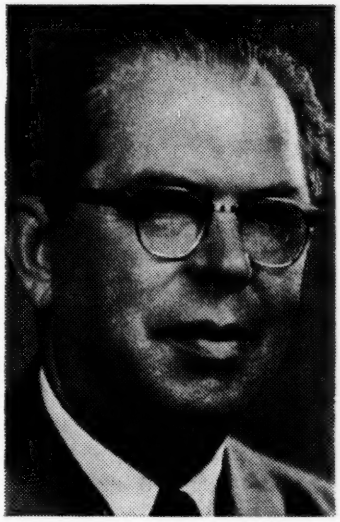
Mr. Jesmer's address follows:

I am fully aware of the great honor bestowed upon me to represent nearly 1500 men and women of the legal profession, and I am keenly mindful of the responsibilities that this task carries with it. I am indeed fortunate that I shall have an able and competent staff of officers and a devoted board of managers, among them a number of active and loyal past presidents to help me carry out the manifold duties of my office. From a humble beginning twenty-three years ago with barely a few dozen members, The Decalogue Society of Lawyers has today grown into an important Bar association, important not only because of the size of its membership—third place after the Illinois State and the Chicago Bar Associations—but more so as a vital force in the profession and in the community.

In a democracy composed of many elements—racial, religious, occupational, and others—there are minority groups with *special* problems imposed by circumstances of history.

The United States, in its political, social and economic progress, occasionally retarded or misdirected by various forces within, moves nevertheless forward for the betterment of *all* of its people at a much faster pace than any other country, large or small.

In the conflict of interests of the diverse elements comprising our great democracy, however, individuals or groups are, occasionally, the victims of bigotry, emotional outbursts, ignorance, "moral epidemics," to quote Judge Learned Hand, or mistakes of judgment to which no government is immune.



SOLOMON JESMER

In times of stress dictated by economic conditions or international tension, forces are set loose which endanger the well-established structure of a great state. Ours is a great state, indeed, but it is not an ideal state. There *is* no ideal state, except in man's imagination—the imagination which makes for progress and the striving toward an ideal state.

From the days of Plato, in fact, long before the era of that great philosopher, man was in search of a utopia. Democracy, with such short-comings as it may harbor, has been found to be the best approximation of such a state; and the American system of democracy, in theory as well as in practice, remains superior to that of other democracies. This is the opinion of the framers of our Constitution and of the generations of our countrymen who followed them. The American government when under Jefferson, with more than one-half of the population disfranchised because of sex or color, was still the best government of *its* day. The American government under Lincoln, with the Union half free and half slave, proved in the end that slavery is not the American or the democratic way. The government under Wilson, with personal liberties restricted under the eighteenth amendment, nevertheless was looked upon by the rest of the world as the noblest and most idealistic of *its* day.

And, finally, our contemporary government—under Truman and Eisenhower, with McCarthyism run-

ning wild, with the McCarran-Walter Act establishing categories of citizenship, and with the surrender of principles to the will of an autocrat, Ibn Saud, of medieval Saudi Arabia—is still the best government in the world. Temporary evils, these! Like the evils in our past, they will vanish because of the growth of our democracy.

Even in the best of lands and under the finest of governments, it is imperative that organized groups exist because of the special problems they face in various phases of life, be it in the field of employment, housing, citizenship, education, voting franchise, or even civil liberties, which we are accustomed to take for granted. In my view, vigilance against the encroachment on the rights of an individual or group is one of the principal functions of The Decalogue Society of Lawyers.

Our Society does not stand alone. We have allies in other organizations whose ideals and pursuits are similar to ours.

To quote the Hebrew scholar, Rabbi Hillel:

If *I* am not for myself, who *will* be for me?
But if only *I* am for myself, *what* do I amount to?

In looking out for the interests directly affecting its members, in taking part in the various activities and welfare of the community, The Decalogue Society of Lawyers strives at all times to work and cooperate with other bar associations, along with which it is a zealous guardian of the basic law of the land. The day may come, I hope, when the Nordics and the Justinians, the Bohemians and the Lutherans, as well as the Decalogians, may open the doors of their respective societies to any lawyer who subscribes to the principles of their respective constitutions.

The previous administrations have established a high standard and traditions that succeeding administrations may follow. The incoming administration will endeavor to maintain these high standards. It will continue, wherever possible, to enlarge our Society's usefulness to the Bar, Bench, and to the community.

There are, however, two immediate tasks that we shall undertake to carry out. The Decalogue Society of Lawyers has experienced a healthy and steady growth. Last year, for instance, nearly a hundred members joined us without an organized effort on our part. This growth should be accelerated. Since the days of our past president Maxwell Andalman, fifteen years ago, there was no organized drive for members. We feel that when the Society will make the necessary effort a substantial additional number of Jewish members of the Bar will join its ranks. Immediate task number one will be a campaign with a minimum goal of five hundred new members.

The vitality and effectiveness of an organization depend upon its active membership participation. It will be the aim of the incoming administration to involve a maximum number of its members in its activities and committees' work. This will be our pressing task, number two. Our greatest aspiration, of course, will be to work together toward the attainment of the goals and principles outlined in our Constitution and continue to merit the confidence of our Society.

Decalogue Society Great Books Course Begins Fifth Year

The Decalogue Society of Lawyers Great Books Discussion classes will begin on September 9, at 6:15 p.m. to 8:15 p.m. and thereafter will continue at two week intervals, for sixteen sessions, at Society offices, 180 W. Washington Street.

No educational prerequisites are necessary for joining the Discussion group; there are no charges for fees, tuition and one may enter without a record of prior attendance. The literature for the fifth year course—sixteen readings of masterpieces—may be purchased through the Society's offices for the sum of eleven dollars. Many of the books necessary may be obtained, of course, from the public library. The books are of pocket size, paper bound, and easy to carry. Acquaintance with these masterpieces will gratify a long felt desire to read and reread classical literature that few would find the time to devote to otherwise than under a disciplined guidance or in company with like minded intellectually curious people.

The constantly increasing interest in this literary activity of our Society makes it advisable to join early. Please remember the date of the first meeting, Monday September 9 at 6:15 p.m. at the offices of the Society, 180 W. Washington Street. For further information call or write the co-leaders of The Great Books Discussion group Messrs. Oscar M. Nudelman, 134 North LaSalle Street, FRanklin 2-1266 and Alec E. Weinrob, 134 North LaSalle Street, FRanklin 2-2766.

The following are the first eight readings of The Decalogue Society fifth year Great Books Discussion course:

Euripides: Medea; Hippolytus; The Trojan Women.
Plato: Theaetetus.
Aristotle: Physics, Book IV Selections.
Virgil: The Aeneid.
St. Francis of Assisi: The Little Flowers.
St. Thomas Aquinas: On Man.
Dante: The Divine Comedy; Hell, Purgatory.
Dante: The Divine Comedy; Paradise.

ILLINOIS LAND TRUSTS in THEORY and PRACTICE

By EDWARD CONTORER

Member Edward Contorer is Vice President and Trust Officer of the Chicago National Bank.

In any discussion of land trusts, one should first state just what is the nature of this vehicle for holding title to real estate. It is the essence of any trust that a trustee holds something for the benefit of someone else, sometimes subject to direction, sometimes not. In a land trust the subject matter or the res is real estate and this res is held by the trustee subject to direction. The trustee under the provisions of the trust agreement is authorized and does agree to deal with the title to the real estate which is the subject matter of the trust upon the written direction of the person or persons vested with the power of direction. The authority and responsibility relating to all phases of management and supervision of the subject real estate is held by the named beneficiaries or such agents as they may designate.

It is basic that an understanding of a land trust must be approached with the acceptance of the trust agreement as creating a trust within the general purview of the law relating to trusts, notwithstanding the admitted fact that the Illinois land trust has imposed upon the trustee few of the responsibilities associated with and inherent in other forms of trusts. One of the immediate problems which differentiate the land trust from other trusts is the necessity for determinating the share of ownership in a broad sense which is held by the trustee and that which is held by the designated beneficiaries. A title holder does not ipso facto become an owner, in the popular acceptance of the term "owner." That part of the ownership which relates to the power of management and control and the right to the income, avails and proceeds is retained by the beneficiary. Only that part of the ownership which is inherent in the record legal title is obtained by the trustee, and its use is limited and prescribed by the terms of the trust agreement; no discretion herein is delegated to the trustee. This limitation consists in limiting the trustee's right of action to dealing with the title only upon direction, with the one exception of a provision enabling and requiring the trustee to dispose of the title following twenty years of the trust's life should the trust then continue in existence. Should the occasion arise requiring the sale of the real estate by the trustee after twenty years of the trust's existence the trustee is directed to disburse the net proceeds of such sale to the beneficiaries as their interests at that time may appear.

EDWARD CONTORER

In the case of Crow vs. Crow 348 Ill. 241 (1932) a husband and wife conveyed real estate to a trustee for the express purpose of having a reconveyance made by the trustee to them as joint tenants. The Court held that the conveyance by the trustee was an effective conveyance inasmuch as the duty of the trustee to make a conveyance was an active obligation of the trustee, thus resulting in the creation of an active and not passive trust. The Court further observed that the trustee took the title to the real estate and not merely a bare power to convey.

Lawyers unfamiliar with land trusts may and often do assert the charge of passive, naked or inactive trust as an appellation for this type of trust, and argue that the Statute of Uses should apply and result in the trust being a nullity insofar as creating a true trust is concerned. In Illinois, our courts have refuted this claim with the argument that both the duty to convey on direction (1) and the duty of sale after twenty years without direction (2) are sufficient to take the land trust out of the application of the Statute of Uses. Furthermore, inasmuch as our courts have found the interest of the beneficiaries in a land trust to be personal property the Statute of Uses will not apply. As a result of the conclusion that the Statute of Uses does not apply to the land trust form in use in Illinois, it follows that the legal title and the equitable title as well pass to the trustee, and are in no way retained by the beneficiary.

There is nothing in our Illinois statutes specifically recognizing the validity of land trusts. These agreements stand or fall as trusts within the law of trusts, as interpreted by our courts. Some states, for example Texas, have enacted statutes which declare that the right of management, control, and the right to proceeds do create an ownership. Such a statute might very likely result in the creation of the ownership right in the beneficiaries under our type of land trust.

In the case of Chicago Title & Trust Company vs. Mercantile Trust and Savings Bank 300 Ill. App. 329 (1939) the Court held that the Statute of Uses has no application to personal property, but only to real estate. This case involved the question as to whether or not the lien of a judgment against the beneficiary of a land trust would take precedence over the lien created by a mortgage signed by a land Trustee under a land trust in which the judgment debtor was sole beneficiary. The Court found that a judgment against the beneficiary would not give rise to a lien against the title, inasmuch as the beneficiary had no interest in or lien upon the land.

Having overcome the hurdle of the legality of the land trust as a proper trust and the recognition of the interest of the beneficiaries as being a personal property interest and not a real property interest, the many and varied desirable uses to which the land trust can be put becomes apparent. The legal title is separated from all remaining interest in the property and powers relating thereto. (3)

Without intending the order of importance of the uses of a land trust, the following are some of the more frequently utilized reasons for using this mechanism for the holding of title to real estate:

1. The trustee may sign an effective mortgage pledging the title as security to an obligation and at the same time employ exculpatory language having the effect of eliminating any personal liability for both the trustee and the beneficiaries. (4) Under a recent Statute passed by the Illinois legislature provision is made permitting waiver of right of redemption by a corporate trustee in the making of mortgages covering certain types of real estate.
2. The land trust, having been established as a valid trust, may contain beneficiary provisions providing for succession in interest by various persons, without the necessity of any Probate proceedings.
3. More than one investor may join in acquiring property in one land trust, thus concentrating the title in one place and permitting the title to be aloof to the vicissitudes in the personal lives of the individual beneficiaries. The trust agreement will recite the respective shares of the total beneficial interest allotted to each investor.
4. Generally the subject matter of a land trust need not be included in the inventory for Probate purposes when a life beneficiary dies, if the trust agreement properly designates remaindermen.
5. Changes in ownership of the beneficial interest may be made without the title being in any way involved, simply by the execution of an assignment of the beneficial interest, a document which is lodged with the trustee but which is not placed on public record. This is possible because the interest of the beneficiary is personal property. (5)
6. Similarly, should the beneficial interest be used as collateral in lieu of a mortgage on the real estate title, an assignment of beneficial interest may be made by the beneficiary as collateral for an obligation of the beneficiary. This device is normally used for short term loans; upon the payment of the obligation the holder of the assignment may either reassign the interest to the original beneficiary or may release any interest obtained by virtue of the collateral assignment.
7. It has been commonly argued by proponents of the land trust that no dower attaches where a beneficial interest is held by a married person, due to the fact that the interest is personal property. The implications and consequences of this conclusion are readily apparent to any attorney. Any beneficiary, regardless of marital status, may deal with his or her interest under a land trust without requiring the consent of or joint action of his or her spouse, unless expressly provided for in the trust agreement.
8. The right of partition does not lie as between beneficiaries of a land trust. Where the trust agreement requires joint action between beneficiaries in the directing of the trustee, Illinois courts have stated that inasmuch as the interests of the beneficiaries is personal property and not a real property interest no single beneficiary would have the basis for maintaining an action of partition involving either the trustee or the remaining beneficiaries. (6)
9. Our Courts have further held that a judgment against a beneficiary of a land trust during the existence of the trust does not in itself create the basis for a lien against the title. The reasoning here, as before, is that the beneficiary has no interest in the title. (7)
10. Another result of the use of a land trust is that the identity of the beneficiary does not appear

on public record, inasmuch as the tract books record only the identity of the holder of the legal title. A Court in a proper proceeding may, however, direct the trustee to disclose the names of beneficiaries.

In the case of Breen vs. Breen 411 Ill. 206, decided in 1952, the case involved a suit by three of the four beneficiaries under a land trust seeking a partition of the premises held in the trust. The Trustee and the holder of a mortgage secured by the trust premises were named as parties defendant. In reaching its decision that a partition suit would not lie, the Court relied on the provision in the trust agreement that the interest of the beneficiaries was stated to be personal property, and further on provision that the trust by its terms was to be terminated within twenty years after its creation if then still in existence. The Court said (page 212), "the trust involved only personal property, and at best only equitable interests not in the land itself, and the Statute of Uses did not execute it."

In common with most activities of life wherein a vehicle adds to the proper and improved functioning of society and of man's adaptation to it, the land trust has had and continues to have some obstacles to overcome, and at times has appeared inconsistent with some of the rules governing the functioning of other types of trusts. These problems are being solved. This fact, of course, is heavily outweighed by the myriad of entirely desirable and correct uses to which this type of trust is and should be put.

From any approach it is this writer's conviction that the land trust has importantly contributed to the simplification of transactions relating to the holding and dealings with title to real estate, without injury to any basic rights of anyone.

[1] *Crow vs. Crow*, 348 Ill. 241
[2] *C. T. & T. vs. Mercantile Bank*, 300 Ill. App. 329 *Breen vs. Breen*, 411 Ill. 206
[3] *Duncanson vs. Lill*, 322 Ill. 528
[4] *Schuman-Heink vs. Folsom*, 328 Ill. 321 *Barkhausen vs. Cont. Ill. Nat'l. Bank & Tr. Co.* 351 Ill. App. 388 (Reversed by Supreme Court in 3 Ill. 2nd 254)
[5] *C. T. & T. vs. Mercantile Bank*, 300 Ill. App. 329
[6] *Aronson vs. Olson*, 348 Ill. 26
[7] *C. T. & T. vs. Mercantile Bank*, 300 Ill. App. 329

CONGRATULATIONS!

Member Abner J. Mikva who represents the 23rd District in the Illinois House of Representatives was chosen by the Illinois Legislative Correspondents Association as the outstanding member of the recently ended 70th General Assembly of the Illinois House of Representatives. It was Mikva's "freshman" term in the legislature. The correspondents association consists of all newspaper men who cover legislative activities in Springfield.

Career Opportunities for Young Lawyers

From the Office of The Judge Advocate General, U. S. Army

It is news when the nation's—and probably the world's—largest law firm announces that it has career opportunities available under circumstances assuring a good income and stimulating cases of the first magnitude to be handled throughout the world, from Honolulu to Paris, from Fairbanks to Rio de Janeiro, and from New York to Manila and Istanbul. Yes, travel expenses paid for the family too, as well as reasonably early retirement on pay which permits of dignified leisure or of the pursuit of hobbies and special personal projects.

The foregoing is not a flight of fancy, but a succinct and reasonably accurate description of the career oportunities in The Judge Advocate General's Corps, United States Army. There are merged in that Corps two of the oldest and most honored professions, the law and the profession of arms.

As to the types of law, the judge advocate even aside from advising as to the private and personal legal problems of the members of the service, works in virtually every known field of law, including but not limited to real property, personal property, patents, trade-marks and copyrights, negligence, corporations, insurance, banking, criminal law, taxes, international law, and contracts. For many millions of dollars to be involved in non-criminal cases is commonplace. A vast amount of trial work is available, for those who like it, in cases before courts-martial, Boards of Review, the United States Court of Military Appeals, and Federal and State regulatory bodies. In addition to the stimulating work, advanced schooling is available in various fields in the nation's best educational institutions. Thus, it is self-evident that, for one really interested in the law, The Judge Advocate General's Corps affords great opportunities, as well as stirring challenges, for self-development and self-realization.

Many fine young lawyers are dedicating their lives and their talents to The Judge Advocate General's Corps of the Regular Army. However, more such lawyers are needed from time to time to meet the losses by attrition. Some decide upon a career in the Corps prior to graduation from law school and others after a few years of active practice. Others do so as distinguished military students, with the result that their active service in the Army is postponed until after completion of their legal training.

Also, there is a continuing need for clearly qualified applicants for appointment in The Judge Advocate General's Corps Reserve, with concurrent call to active duty. In these days when virtually all are subject to call for military duty, service in the Corps is considered by lawyers a most profitable and advantageous method of performing the required duty. Senior law students, desiring to meet their military obligations in this fashion, should file their applications promptly and in advance of graduation and admission to the bar.

Further information on appointments in The Judge Advocate General's Corps of the Regular Army or in The Judge Advocate General's Corps Reserve is readily available upon request directed to the Miltary Personnel Division, Office of The Judge Advocate General, Department of the Army, Washington 25, D. C.

APPEALS -- BRIEF AND ARGUMENT

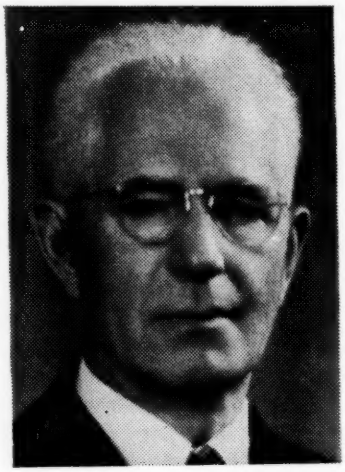
By JUDGE U. S. SCHWARTZ

Excerpts from a recent address by member Judge U. S. Schwartz of the Appellate Court of Illinois before the Illinois State Bar Association, Junior Bar Section.

The first and most important problem confronting you is that you understand and know your case well. If you have gone through the trial and it has been a bitter one, it would be well for you to spend a period in retreat, sloughing off the emotional antagonisms of the trial and your contacts with the opposing side. You will probably have an adversary as earnest as you and standing between these extremes there is the court. Too ardent an assault may produce an unfavorable reaction even though the court will understand and sympathize with the lawyer who has become deeply involved in his client's case. It is therefore important that you stifle all smoldering elements of bitterness. Nothing can be worse than to have them creep into your brief. In one case where counsel had been greatly provoked by what he felt was the inadequacy of the trial judge, he devoted some portion of his brief to criticism and condemnation. Many pages were loaded with various styles of type, italics, and sentences in black letters, full of capitals. My opinion in this case was:

> A reviewing court is thrown into the midst of a problem, whether complicated or simple, with abrupt immersion. Counsel, in the preparation of briefs, should bear this in mind and make it their first duty to clarify the issues and their position with respect to them. A psychological assault of upper-case artillery and a barrage of emphases serve only to distract and becloud.

Your problem will be to give the court an account of what has gone before; that is, at least a sufficient account to enable the court to understand the issue and to understand your position. To this end, the abstract must be adequate. It will not help your case to file an abstract which is inadequate and to leave to your opponent the filing of an additional abstract, which can only serve to emphasize his side of the early part of this century, when asked to talk you may have quite a story to tell. It can be told in a drab and ineffective manner or it can be told interestingly and at the same time with precise accuracy. How to do that no one can tell you. Nothing could be more prosaic and less dependent on inspirational drive than the reorganization of a failing enterprise. Yet, Adrian Julian, the great reorganization lawyer of the early part of this century when asked to talk on that process, then a mystery to most of the bar, replied that you could no more tell a man how to reorganize a great enterprise than you could tell a poet how to write a poem or a composer how to write music. Of course, the writing of a brief or the making of an oral argument is not in any strict sense an art. Facts, precedents, authority and reason, all prosaic, are to be presented and positions must be taken. Then begins a consideration of form and structure, of sentence and paragraph, and that is where the elusive faculty called art takes over.



JUDGE ULYSSES S. SCHWARTZ

In the telling of let us say the dramatic events which took place before the appeal, much can be learned, I think, in the way of simplicity, clarity and conviction from great writers of fiction. To me the stories of Willa Cather are models that could well serve for the telling of any kind of story. Sentences that generally consist of 15 to 20 words, never more than 35 or 40, can reveal in one swift stroke the story of a great man or a household domestic. Of course, that is genius, but it is from genius that we learn. I know you have been impressed time and again with the necessity of making briefs brief. Part of this may be due to the fact that judges become impatient. A brief should be adequate to properly explain your point or points. You must have a favorite point. Do not let it get lost in a maze and only brought to light in its full effectiveness under questioning and oral argument. Long quotations from cases are not necessary. Do not feel you are plagiarizing because you take the court's statement and make it serve your purpose. Of course, do it carefully, because at least

in our court I know of no judge who will not read the cases and who does not have an adequate comprehension to read them correctly. Having done that, I have told you all that can be told about how to write a brief.

Next you will be confronted with the question of whether to ask for oral argument. I am one of the judges who thinks oral argument can be important—though not always, perhaps not in 50% of the cases does it serve any purpose; but there are times when it serves a very genuine and real purpose. I have in mind an instance in which a point was lost in the briefs, not because it was not made there, but because certain dramatic occurrences overshadowed it and because it was submerged by other points. But on oral argument, under adverse questioning, I may say, the lawyer made his point effectively and enlightened the court. This sort of thing does occur occasionally. John W. Davis, quoted Judge Dillon as saying that it is for the court to go wrong unless in oral argument the truth can be hammered out.

Having decided to argue a case orally, if it is in our court I think you have a little different problem than in a court which has 7 or 9 members. In our court, the briefs are read beforehand. How much and to what extent depends upon the individual judge. At first I used to study the briefs carefully, but I found I was so committed to a position before oral argument that I hardly gave counsel a chance to argue his case. I then adopted the practice of scanning the briefs sufficiently to know the facts and still be willing to listen to the argument. Only thirty minutes are allowed for an argument, although on request more time is granted if it appears desirable. Addressing a three-man court leaves little place for eloquence. It is important to hammer at your outstanding point. I know from experience how difficult this is. It is hard to relinquish, to slaughter the children of your own brain, and pick out one favorite point, but that is desirable. There is generally a point in a case upon which it will turn and to which every other point must be made subsidiary. That is important because of time, and it is particularly true if the point is one that may be missed. I know that sometimes the judges' questions are considered unfair; that lawyers who have prepared speeches to the court hope to sway them by well-reasoned argument and are nettled by interruptions which distract. Nevertheless, considering the nature of the court, it would be a mistake for us not to ask questions and for you not to expect them. They will reveal what the court is bothered about. Often a judge feeling that a point is sound, but not fully confirmed in that, will deliberately ask questions which may appear to cast doubt, in order to evoke that "pounding out" of the truth which Judge Dillon referred to.

Do not be afraid to stand up to the court if you think the court is not asking a fair question. Neither I nor any judge under ordinary circumstances is troubled because a lawyer stands up for his understanding of the law and does not think well of the court's understanding of it. There are times when lawyers go into personalities with judges, too. That has no place in an argument.

Having made your oral argument, in due course you will get your opinion and then comes the question of whether you or your opponent should file a petition for rehearing. There is much talk at the bar about the extent to which courts consider petitions for rehearing. A petition for rehearing represents the only opportunity to the defeated party to tell the court what he thinks of it and its opinion. It is, in any event, a good method of catharsis, whether successful or not. In the vast majority of instances, such petitions are denied. The reason is simple. In a three judge court, there are not one but many conferences over a case. In one case, *Donnelly* v. *Pennsylvania* 342 Ill. App., we had, I would say, at least 25 conferences; and finally a divided court. Now obviously, where a matter has been reviewed and reviewed again, there is little chance that any points made in such a petition, even though not fully discussed before or perhaps even omitted in the opinion, have not been fully considered by the court. Nevertheless, the petition for rehearing is read and carefully read if for no other reason than for the lurid attraction of its often emotional content.

If the petition for rehearing is denied, you may consider whether to ask for a certificate of importance. Two questions are involved. Where the amount is more than $1500, there is no reason why a petition for leave to appeal cannot be filed and let the Supreme Court determine whether to take the case. Where the amount involved is less than $1500 and a principle is involved, the question of its importance is then before us for decision. In our determination, we must take into account the fact that the Supreme Court, by reason of the many appeals to it directly, carries a tremendous load of work and I am sure does not expect us to transmit to it by way of certificate of importance anything which is not of demonstrated importance to litigation. The mere fact that a matter of first impression was before us is not enough.

H. Burton Schatz Honored

The Garfield Park B'nai B'rith Lodge now twenty years old voted at its last meeting to designate that organization hence as the H. Burton Schatz Lodge. Burton is a past president of the lodge and a long time member of the Board of Managers of The Decalogue Society of Lawyers.

Applications for Membership

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LEGAL EDUCATION

The Decalogue Society Legal Education committee, Albert I. Zemel, chairman, John M. Weiner co-chairman, will shortly announce the names of speakers, subjects, and dates of their forthcoming program. The first lecture, it is expected, will be held late in September.

GROUP DISABILITY PLAN

Parker, Aleshire & Company whose group disability plan has been approved by our Society and became effective on April 1, 1957, invites added enrollment by our members. Proof of the desirability of this plan over policies offered by other companies is the fact that the Parker, Aleshire plan is now in effect with over 300 other Bar groups including the Chicago Bar and the Illinois Bar Associations. The Decalogue Insurance Committee, which after a close and painstaking study of other group insurance disability plans, chose Parker, Aleshire & Co., recommends its policy and urges members unfamiliar with the advantages offered to study its provisions by applying for an application form to learn of the many benefits offered. Write or phone Parker, Aleshire & Company, 175 W. Jackson Blvd., Chicago 4, Ill.

ATTEND AMERICAN BAR ASSOCIATION MEETING

The following members of our Society attended the American Bar Association annual convention held last July in London, England:

Saul A. Epton
Herman Goldstein
Sidney J. Goldstein
Morris Haft
Judge Julius J. Hoffman
Albert and Esther O. Kegan
Milton H. Miller
Morton Schaeffer
Alec E. Weinrob

AN ANNIVERSARY CITATION

Member Morris S. Bromberg, a director of The Board of Jewish Education, presented on June 9 at the annual graduation exercises of The College of Jewish Studies a citation from that institution to The Chicago Jewish Forum, a national quarterly, on the occasion of "the fifteenth anniversary of its establishment." The citation was received on behalf of the Forum by Benjamin Weintroub, its editor and publisher.

Weintroub is a past treasurer and president of The Decalogue Society of Lawyers and is editor of The Decalogue Journal.

FOURTH TERM

Member Harold E. Friedman was reelected to a fourth consecutive term as Grand Master of The Progressive Order of the West lodge.

ISRAEL AND U. S. REAL ESTATE

By MORRIS S. BROMBERG

Member Morris S. Bromberg, civic leader, is a former president of The Zionist Organization of Chicago.

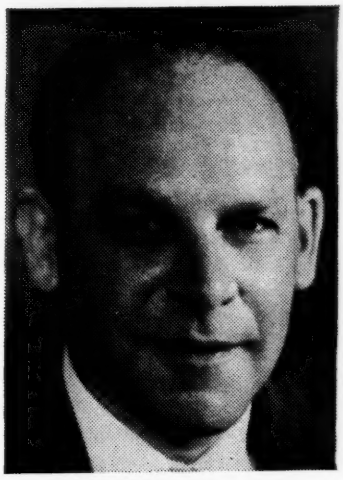
Is the law prohibiting foreign nations from owning real estate in the United States except for consular residence, so absolute as to prevent a foreign nation from taking title to real estate under a will even though it be only for the purpose of immediately transferring the same to a private American citizen?

The law forbidding foreign powers from owning real estate in the United States, stems from the principle, that since foreign countries exercise complete dominion and sovereignty over their property they can maintain their own police force and thus, theoretically, their own army. The maintenance of an army would obviously constitute a constant threat to our own peace and sovereignty. Recently, the writer was confronted with such a problem. The facts are as follows:

In 1954, a testator died leaving a will in which he devised a life estate to his niece in Chicago with the remainder in fee to the State of Israel. The property in question was located in Texas. The will further designated a successor devisee in the event that the State of Israel could not, for any reason, take title. The niece, who resides in Chicago wished to purchase the fee but she shared her late uncle's desire that the State of Israel benefit from the purchase instead of the successor devisee.

After securing an appraisal to determine the value of the fee interest, the niece negotiated with the consular representative of the State of Israel and a mutually satisfactory figure was arrived at. At that point, however, there appeared a stumbling block. Could a State give a deed to property which it *could not* own? The problem was presented to this writer for solution. The arrangements to obtain the fee from Israel were satisfactorily consummated but the mechanics of carrying out the transaction presented an apparently insoluble situation. There was no precedent to guide the lawyer. Arrangements were finally made with a title company in Texas which agreed to guarantee title coming through the State of Israel provided that a proper deed could be obtained.

Through the Israel Consular Office in Chicago, it was learned that in order to meet situations similar to the one at bar, a special law had been enacted by the Israeli Knesseth (Parliament) empowering and authorizing the Minister for Foreign Affairs "for and on behalf of the State of Israel to receive and dispose of any property situated outside of Israel and to



MORRIS S. BROMBERG

delegate this power and authority in any particular case to any other person."

A check with the consular offices both here and in Washington disclosed that similar authority had never been exercised by any foreign country in America except in the case of real estate to be used for consular purposes.

Taking advantage of the special law of the Knesseth, we proceeded to secure a power of attorney executed by the foreign minister, Golda Myerson. This power was authenticated by the Attorney General of the State of Israel, Haim H. Cohen. The Hon. Simcha Pratt, Consul General of Israel at Chicago Illinois, was designated as attorney in fact.

When the various documents were submitted to the attorneys for the title company in Texas for approval, they advised us that under Texas law the documents had to be acknowledged by an American consular official in Israel. Here we reached a real impasse.

The seat of the Israel Government is now in Jerusalem. The United States however, maintains its consular offices in Tel Aviv because it refuses to recognize the right of the State of Israel to maintain its national capital in Jerusalem. Although Golda Myerson customarily visits Tel Aviv several times a month, protocol would not permit her and Attorney General Haim Cohen to go to the American Embassy in Tel Aviv to acknowledge their signatures. Protocol also forbade the United States consular officials to go

to Jerusalem to take the acknowledgement of the signatures. The mountain here would not go to Mohammed, nor would Mohammed go to the mountain.

For a period, it seemed that the only recourse left to the writer would be to get the United Nations to put its seal of approval on Jerusalem's status as the officially recognized capital of the State of Israel. This eventuality seemed unlikely in view of the perennially unfriendly attitudes of the various Arab rulers.

Necessity, however, is the well known mother of invention. The writer recalled that Chicago attorney Bernard Shulman, who represents the Israeli Consul General in Chicago, and who was handling this transaction for the State of Israel, had personally procured the documents from the Israeli Foreign Minister and Attorney General, while he was visiting in Israel in the Summer of 1956.

Accordingly, the writer communicated with the attorneys for the title company in Texas to ascertain whether they would accept the documents if they were witnessed and authenticated by Mr. and Mrs. Bernard Shulman. After some telephoning and correspondence, the title company finally agreed, in the interest of international amity, to accept the alternative authentication.

Sighs of relief and gratification were premature. A new complication had developed. Golda Myerson, the Israeli Foreign Minister, had changed her name, in the interim, to Golda Meir. This required another tedious exchange of documents officially declaring that Golda Myerson and Golda Meir were one and the same person.

Now all that remained to be done was drafting the deed. Here came the beginning of a field-day for a lawyer. How does one draft a deed where the grantor is a sovereignty? No stationery stores had stock forms for this purpose. A search of legal form books offered no guidance. Previously, there had never been any occasion for a form of deed from a sovereign country to an American citizen. How was such a deed to be drafted?

After protracted discussion with the attorneys for the title company, the attorney for the Israeli Government, and many well meaning friends, I, aware of the historic implications of my task, took pen in hand, and evolved the following document:

"Know all men by these presents that the State of Israel, a Sovereign Nation, acting herein by and through its duly authorized attorney in fact, Simcha Pratt, Consul General of Israel, at Chicago, Illinois, acting under and by virtue of a Power of Attorney, executed by Golda Myerson, Minister of Foreign Affairs of the State of Israel, in hand paid by..... out of her sole and separate estate, of the City of Chicago, Illinois, receipt of which is hereby acknowledged, has granted, sold and conveyed by these presents, does grant, sell and convey unto the said .....subject to her life estate herein, that is to say, the remainder interest on the following tract and parcel of land situated in the City of....., County of ..... and State of Texas, to wit"

The deed was signed:

STATE OF ISRAEL, A SOVEREIGN NATION
BY .....

Simcha Pratt, Its duly authorized agent and attorney and by virtue of a power of attorney executed by Golda Myerson, Minister of Foreign Affairs of the State of Israel, a sovereign nation.

The deed was recorded and title guaranteed by the Dallas Title Company.

And, thus, was concluded a transaction involving the first recorded instance of real estate, owned even momentarily, by a foreign country. And, so, too, was averted the threat that Israel might some day absorb the United States through ownership of real estate here.

COMMITTEE CHAIRMEN

(*Continued from Page* 2)

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LAWYER'S INCOME

INCOME OF LAWYERS IN THE POSTWAR PERIOD. Factors affecting the distribution of earnings. By Maurice Liebenberg. Condensed from Survey of Current Business, December 1956, by member Leonard L. Leon.

The average net income of lawyers engaged in all forms of legal practice was $10,220 in 1954, 36 percent higher than the average of $7,530 in 1947. Increases were similar for lawyers engaged primarily in independent practice and for those whose main source of legal income was salaries. In evaluating this income advance, consideration should be given to the general rise in prices and living costs during this 7-year period. If the consumer price index may be accepted as an approximate guide, about one-third of the 36 percent increase represented a gain in real income.

The data presented in this article were obtained by the Office of Business Economics. The study covered incomes for the period 1950 through 1954, and was based upon a sample of all lawyers in practice. Like all population groups, lawyers are composed of many heterogeneous elements which differ markedly in earning power. Nature of clientele, age, source of income, size of community and geographic location are some of the factors which profoundly affect earning capacity. The following sections briefly explore some of these factors as they relate to income.

In 1954 approximately one half of the total gross income of lawyers was received from individuals and the remainder for legal services performed for the business community. The pattern that emerges is one of ever decreasing percentage of gross income received from individuals as higher levels of gross income are attained. The lowest levels of gross income show a very high dependence on individual clientele. In 1947 71 percent of lawyers reported that they received more than one half of their gross income from individuals. The present survey reveals that 67 percent fall in this category, implying a larger dependence on business in 1954 than in the earlier year.

Lawyers working exclusively in salaried employment for private industry received, on the average, the highest income recorded. In 1954, they had a mean net income of $13,770. A high relative position is maintained also by lawyers working for private industry with some income from independent sources. For those lawyers whose major source was outside the legal service industry (legal services performed for the business community) the lowest income was associated with government employment. The civilian, nonjudicial Government lawyer working only for salary averaged $7,920 in 1954. Average income for a Government lawyer who also received some independent income was $7,390.

Since independent lawyers frequently carry on their practices under partnership arrangements, it is interesting to study the change in the number of partnerships over time, and to examine the relationship between the size of such combinations and the average income of its members. It is apparent that a marked shift has occurred in the organization pattern since 1947. In the earlier year 74 percent of all lawyers were in practice as individual practitioners. Almost 15 percent were in firms consisting of 2 partners, and the remaining 11 percent in firms consisting of over 2 members. In 1954, the percentage of lawyers in individual practice had fallen to 65 and the percentage in 2 member firms had risen to 18 percent. Approximately 17 percent were classified in firms consisting of over two partners. The percentage of lawyers in firms having nine or more partners rose from 1.3 to 2.2 percent. Also apparent is the marked relationship between the size of firm and the average income of lawyers. Lawyers in firms consisting of between five and eight members received on the average over three times as much income as those in individual practice. In the nine or more category the earnings are almost five times the income received by lawyers in sole practice.

An important reason for income variability among lawyers is the size of community in which they practice. The relationship between size of legal income and size of place is such that income continues to mount from the smallest to the largest communities. It may be noted that the pattern of income versus size of community appears to break down when examination is confined to large concentrations of population. For example, San Francisco, with the smallest population of the major cities included, reported the highest mean income of $17,340 for major independent lawyers and $13,160 for the group of all lawyers. It appears that in the largest communities local factors become significant in explaining sizes of income.

In all occupations and professions a relationship exists between age and income. Professions in general compared with most other occupations are typified by long periods of earning power which do not terminate until well into old age. For the group of all lawyers, income rises from $5,280 in the 25 to 29 year age group to a peak income of $12,870 earned by lawyers aged 55-59, and then declines to $9,050 in the 65 and over group. A feature of this pattern is the relatively stable earning power

over a substantial number of years on both sides of the maximum income group. Thus, from age 45 through 64 average net income does not vary by much more than $700. This rather broad peak of maximum earning power is characteristic of professions and constitutes one of their attractions to new entrants.

In 1954 about 8 percent of the lawyers in the sample reported part-time status. This group was composed of lawyers whose exclusive source of earnings was from legal work as well as those who had supplementary extra-legal earnings. It is not surprising that the legal income of this group is substantially less than that of full-time lawyers. The part-time group reported legal earnings less than half that of their full-time colleagues.

The survey showed substantial numbers of part-time lawyers at almost all levels of net income. As might be expected the proportion of part-time lawyers is largest at the lower levels of net income. But a proportion, usually varying between 3 and 4 percent, was found at all the high income levels with the exception of the $75,000 and over class. The presence of this group at high income levels indicates that for a sizable number of lawyers part-time practice is not associated with relatively low earnings.

LEONARD I. WISSMAN

Leonard I. Wissman, popularly known to hundreds of our members as the "godfather" of our Society, died in Hollywood, California on July 24th. The appellation "godfather" was bestowed upon him early in the existence of the Society because Wissman's selection of the name "Decalogue" was officially accepted as the name of our organization by the founding group of which he was a charter member.

Upon learning of his death The Board of Managers directed that a resolution of condolence and sympathy be sent to the surviving members of Wissman's family, all now residing in California. These are: a son, Walter; a daughter, Mrs. Marvin Finder; three sisters, and three grandchildren.

Wissman was admitted to the Illinois bar in 1917. He had been on the Cook County state's attorney's staff for about twenty years before moving to California in 1944. He was a prosecutor during the murder trial of Richard Loeb and Nathan Leopold.

MAXWELL ABBELL

The Chicago Jewish community, Jewry in the United States and numerous civic and religious causes throughout the land lost in the passing of member Maxwell Abbell, a sincere, devoted and a generous friend. Three months ago more than a thousand people gathered at the Morrison Hotel, at an Israel Bond drive dinner to pay tribute to him for his immense contributions to the economic and spiritual upbuilding of the State of Israel. In an editorial comment on the occasion, The Chicago Daily News said, "We join with his fellow Chicagoans in saluting Maxwell Abbell for the vigor and devotion with which he has supported democratic ideals."

A lifelong fighter against bigotry and prejudice, a former president of the United Synagogue of America, he also served long and with distinction as chairman of President Eisenhower's Committee On Government Employment Policy.

Maxwell Abbell gave much of himself and his substance to enhance the prestige of the legal profession, Jewish religion, and American ideals. He was senior partner in the accounting firm of Maxwell Abbell & Company and head of the law firm of Abbell and Abbell.

Survivors are his wife Fannie, two sons, Samuel and Michael, three daughters, Nahami, Mrs. Miriam Rosenblum, and Mrs. Ruth Ben-Jehuda of Israel, three grandchildren, and a brother, Joseph.

FOUNDATION FUND

At an election by our Board of Managers held at a luncheon at the Covenant Club on Friday July 19, Benjamin Weintroub, Samuel Allen, and Harry D. Koenig were elected for three, two, and one year terms respectively, as trustees of the Decalogue Society Foundation Fund.

Allen, the new trustee of the Fund, was elected to fill the vacancy caused by the resignation of Solomon Jesmer, President, as trustee, a post he held together with Weintroub and Koenig, for fourteen years.

The Gary Bar Association

Member Richard S. Kaplan, historian of The Gary Bar Association, is the Editor of the recently issued "Supplement to the History of The Gary Bar Association, 1953-1957." The booklet, a golden jubilee edition, was issued on the occasion of the 50th anniversary of The Gary Bar Association.

BOOK REVIEWS

AMERICAN IMMIGRATION POLICY, 1924-1952, by Robert A. Divine. Yale University Press, 220 pp. $4.00.

By JOHN M. WEINER

Member of our Board of Managers, John M. Weiner is executive director of Chicago Hebrew Immigrant Aid Society.

This intensive study of the federal government policy toward the admission of immigrants supplies a missing chapter in the current literature on the history and problems of American immigration.

The author does not delve deeply into the sociological, psychological, or economic forces that have molded the pattern of our immigration policy. By concentrating on the end results of official action taken by the respective administrations from 1924 to 1952 and by describing the contest between the principal factions in Congress, he has provided a succinct review of federal policy in the ever-present problem of immigration. By decreasing the size of the arena, Professor Divine provides the reader a closer view of the chief combatants grappling as friend or foe of immigration.

Here, in quick review, are the earlier advocates of anti-immigration: Francis A. Walker, President of Massachusetts Institute of Technology, Henry Cabot Lodge, Madison Grant, Gino Speranza and his articles extolling the racial homogeneity of the Anglo-Saxon people (although his parents were Italian immigrants), and the novelist, Kenneth Roberts, with his virulent reports in the Saturday Evening Post leading the parade. And arrayed in favor of liberal immigration were such men as Congressman Adolph Sabbath, Senator Gerald Nye, and above all, Congressman Samuel Dickstein, who probably more than any other public figure fought valiantly throughout the 30's of this century and prevented the enactment of a permanent 90% reduction in our immigration.

The author provides a superb summary of the legislative processes employed in 1924 to enact the national origins quota system which has been perpetuated to this day by the McCarran-Walter Act. As Professor Divine wisely comments, "the result of the jockeying for a favored position in the allotment of quotas was a heightening of minority consciousness among the foreign born and a spirit of discord which lessened rather than increased national unity."

One of the chief values of this excellent study is the disclosure of the growth of administrative power and action in the field of immigration despite Congressional restrictions. This permitted our nation to take advantage of immigration as an instrument in the cold war. The precedent thus established by prior administrations moved President Eisenhower to take administrative action in paroling more than 30,000 Hungarians into the United States following the revolution of October 23, 1956.

However, administrative action can be a two-edged sword. As pointed out by Professor Divine, although natives of Mexico are not restricted by quota, nevertheless, the use of administrative discretion in insisting on more than adequate documentation and financial guarantees has resulted in sharply reducing the number of visas issued to Mexicans for permanent immigration. To what extent the administrative limitation on visas to Mexicans has contributed toward the wetback migration would require another study.

The preliminary moves in Congress for the passage of the McCarran-Walter Act, its veto by President Truman and the over-riding vote by both Houses is tersely described. The author concludes "though most Congressmen refuse to disclose their views on this point, there can be little doubt that their support of the national origins plan rested on a continuing belief in the ethnic theory so popular in the 1920's."

Professor Divine is to be congratulated for his success in carefully analyzing a massive bibliography and in his ability to select the salient features of federal immigration policy. One slight fault must be noted. In discussing legislative enactments, secondary sources are given instead of the specific statutory citations. Certainly, in a work of this nature, references to the texts of the immigration act are inescapable. While, for the most part, he successfully maintains a view that is impartial and objective, the book, however, closes on a note that is almost tantamount to saying that "after all, it was all for the best." Even scholarly impartiality can be jarred by reflecting on the narrow escape our nation sustained in barely avoiding severely restrictive legislation which would have crippled our man-power needs and talents during World War II. However, *American Immigration Policy* is a major contribution to current literature on immigration in that it provides a study which is useful to the specialist as well as to the layman.

OF LAW AND MEN. Papers and Addresses of Felix Frankfurter. 1939-1956. Edited by Philip Elman. Harcourt, Brace and Co. 364 pp. $6.75.

Reviewed by ELMER GERTZ

In the 1920's and 1930's Felix Frankfurter, then a law professor at fabled Harvard, was a living legend—the embodiment of legal knowledge, social understanding, and moral inspiration. When another living legend, Franklin D. Roosevelt, named him to the United States Supreme Court in 1939, it was

universally felt that he was in the natural succession to Holmes, Brandeis and Cardozo. Then something happened; disillusionment, even revulsion, set in. Many began to feel that the legend was lacking in heroic lineaments. Among those who had once been loudest in his praise, it was now fashionable to point out Frankfurter's limitations, failings and frustrations. Others were given the benefit of the doubt; Frankfurter never. Because he was not everything that some had imagined, he was now nothing.

The initial value of this latest work from Frankfurter's dexterous pen is that it is a corrective of the recent misjudgment of the man and the Justice. Frankfurter emerges from this book as a subtle, sensitive, cautious person who somehow contrives at the same time to be eloquent and lavish. To get his true measure, one should read first of all the thirty-four In Memoriam notices with which the book closes and then the eleven essays in the section on "The Judicial Process in Action" before going through the rest of the volume.

The memorial notices deal with departed colleagues on the Harvard faculty, distinguished scholars every where, men in public life at home and abroad, and young people hardly known to fame but beloved by a man with a marvelously full capacity for friendship. Frankfurter is not a celebrity-hunter, although he has known many of the exalted personages of his day. He is, rather, a cultivated collector of souls. He seeks out in all men that element of uniqueness, the quintessential distinction, that makes a memorable character. Without being blind to faults, he knows that men, as well as institutions, are good or even great despite their failings. He judges with the fine charity of a big man. All come to life again as he writes of them, whether his subject be a gifted student who died prematurely in war or a fabulous President of the United States.

It would be surprising, indeed, if Justices Hughes, Stone, Holmes, Brandeis, Jackson, Cardozo or Roberts were ever more justly appraised than in this work, where Frankfurter, their intimate and co-equal, deals with them as part of the judicial process in action. Frankfurter does not merely generalize about them. He is as specific as their writings and opinions permit. He goes unerringly to the phrase or paragraph that best epitomizes the jurist. We see why he regards Holmes as having the best mind, and why it was that Cardozo instantly won his assured place in the history of the court. As he advised a twelve year old Virginian who wrote to him for guidance, Frankfurter believes that to be a competent lawyer or judge one must first be a cultivated man, widened and deepened by literature and the other arts.

There is an almost irresistible temptation to quote at length from this clairvoyant book by a jurist who is himself a great quoter. "Strength to endure comes from confidence, and confidence is rooted in faith," he writes of Jefferson. "But faith is not self-generated. It is moral energy stored up in the past." In commemorating Aaron Levy, a Jew of Revolutionary days, he declares: "Democracy is always a beckoning goal, not a safe harbor. For freedom is an unremitting endeavor, never a final achievement. That is why no office in the land is more important than being a citizen."

Frankfurter came from Vienna when he was twelve years old. He has never ceased to remember that he is of immigrant stock, and this has made him a better American than most indifferent people who date back to Plymouth Rock. Whosoever touches this book feels that there is blood and nerves and brain-power in every page of it.

COMPULSION, by Meyer Levin. Simon and Schuster. 495 pp. $5.00.

Reviewed by BENJAMIN WEINTROUB

Thirty-three years ago two young men, eighteen and nineteen years of age and children of wealthy parents in Chicago, murdered a thirteen-year-old boy. The common reference to the murder is to this day the "Loeb-Leopold case." Only Nathan Leopold, who has been in the Joliet Penitentiary now for more than three decades, is an infrequently-heard-from voice of the past. His companion in the atrocity, Richard Loeb, was killed by a fellow-convict in 1935, eleven years after his imprisonment.

Now comes Meyer Levin, already widely known in Chicago for his famous novels, *The Old Bunch*, *Citizens*, and other works, to retell the "Loeb-Leopold case" and explain in almost scientific terms the "compulsion" processes and "motiveless" actions of the convicted boys in perpetrating the crime.

Judd Steiner (Nathan Leopold) and Arthur Straus (Richard Loeb) had been steady and intimate friends for several years. Neither, according to the author, received more than the nominal parental care accorded to children of the rich surrounded by governesses, private tutors, chauffeurs, etc. Each had grown to be self-contained and to pursue a life according to the dictates and whims of his own nature. Both were precocious students. From the earliest days of their so-called maturity, they had learned to distrust their fellow-students and family. An accidentally observed scene disclosed to a witness, and through him to others, the fact that they were homosexuals of long and persistent practice.

Judd Steiner, a voracious reader, regarded himself a disciple of the German philosopher Nietzsche and as a budding superman whose intellect rejected the accepted and conventional behavior and for whom

concepts of right and wrong were nonexistent. His rationalization of history was glib, superficial, and brilliant. In its totality it was a defense of the premise that the end justifies the means.

Arthur Straus, ostensibly a fine specimen of manhood, developed into a braggart, petty thief and prevaricator who, because of parental indulgence was able to gratify costly whims, cultivated an intimate alliance with Judd Steiner. The two, in the course of their association, conspired to satisfy a yearning to execute a "perfect crime." Their prior offenses—thievery and arson had gone undetected and unpunished. In their long and studied preparation for the crime there was never an awakening of a feeling of pity for their unknown victim. It was to be a kidnaping. Their choice of the thirteen-year-old Paul Kessler (Bobby Franks) was accidental. The child simply happened along when they were on the prowl for a victim. Inveigled into their death car, he was immediately killed by Arthur Straus and his body disposed of on the outskirts of the city. Ransom notes were dispatched to Kessler's father, but before the frantic parents could pay the ten-thousand-dollar ransom demanded of them, the child's corpse was found and identified.

In the ghastly process of doing away with the body of the boy, Judd Steiner lost his eyeglasses. The author, then a cub reporter on a local newspaper, and a fellow university student of Steiner and Straus, though ignorant of the identity of the murderers, furnished the police with important clues. The two murderers were eventually apprehended. It should be noted that, aside from the value of *Compulsion* as a profound narrative of psychological significance, this book was listed by the New York Times as "also, a detective story, superb both in quality as fiction and fidelity to fact."

Transcending these and other aspects of this novel is the author's meticulous research into the mentality, background, environment, and intellectual processes that evoked the monstrous act. This he achieved through an examination of fellow students and relentless investigations into the lives of Steiner and Straus from their very infancy. Much of this, of course, emerged from the testimony of the alienists employed by the defense to find data that would make for "mitigating circumstances" in the trial of the culprits for their lives. The insistence by the prosecution that the young defendants knew right from wrong and that precedent dictated a verdict of guilty fell flat as against a masterfully advanced plea by the defense that the minds of their clients were "diseased" and immature, and that they were wholly incapable of rationalizing the consequences of overt acts. The court in a lengthy opinion accepted the contention of the defense about the "mitigating circumstances," but imposed upon the defendants a life sentence in prison on the ground that they were minors.

In the moving narrative of Meyer Levin the lawyer for the defense, Jonathan Wilk (Clarence Darrow) emerged more than merely a zealous advocate for lenience. His speech before the court, in which he sought to place at least a part of the blame upon the innate inadequacies of human nature, upon the helplessness of society to cope with the derelictions and ill-defined standards of normal human behavior, and the acknowleged limitations of psychiatric knowledge, stamped the lawyer as a man of immeasurable stature. Jonathan Wilk articulated for the public the utter bankruptcy of accepted dogmatic regard for the acts of the hopelessly confused youth of the nation. He condemned Steiner's and Straus's act but, in effect, he insisted that charges should be levelled against factors beyond the immediate capacity of society to change or eradicate.

If I should succeed in saving these boys' lives and do nothing for the process of the law, I should feel sad indeed. If I can succeed, my greatest reward and my greatest hope will be that I have done something for the tens of thousands of other boys, for the countless unfortunates who must tread the same road in blind childhood that these poor boys have trod—that I have done something to help human understanding, to temper justice with mercy, to overcome hate with love.

He succeeded.

Compulsion is a major contribution to belles-lettres. It is important both as a thrilling story and as a penetrating analysis of human nature at its worst and at its finest.

On the occasion of our High Holidays

The President, the officers, and the Board of Managers of The Decalogue Society of Lawyers extend to fellow members, their families, and to the entire legal profession their warmest wishes for a very Happy New Year.

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